

## **IC 12-10-6**

### **Chapter 6. Residential Care Assistance**

#### **IC 12-10-6-1**

##### **Eligibility of county home residents; amount; rate; personal allowance; reimbursement rules; annual rate review**

Sec. 1. (a) An individual who:

- (1) is at least sixty-five (65) years of age, blind, or disabled; and
- (2) is a resident of a county home;

is eligible to receive assistance payments from the state if the individual would be eligible for assistance under the federal Supplemental Security Income program except for the fact that the individual is residing in a county home.

(b) The amount of nonmedical assistance to be paid on behalf of a resident in a county home must be based on the daily rate established by the division. The rate for facilities under this section and licensed under IC 16-28 may not exceed an upper rate limit established by a rule adopted by the division.

(c) The rate for facilities under this section but not licensed under IC 16-28 must be the lesser of:

- (1) an upper rate limit established by a rule adopted by the division; or
- (2) a reasonable and adequate rate to meet the costs, determined by generally accepted accounting principles, that are incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

(d) The recipient shall be paid or allowed to retain from the recipient's income a monthly personal allowance. The amount:

- (1) is fifty-two dollars (\$52);
- (2) is exempt from income eligibility consideration by the division; and
- (3) may be exclusively used by the recipient for personal needs.

(e) In addition to the amount that may be retained as a personal allowance under this section, an individual is allowed to retain an amount equal to the individual's state and local income tax liability. The amount that may be retained during a month may not exceed one-third ( $1/3$ ) of the individual's state and local income tax liability for the calendar quarter in which the month occurs. This amount is exempt from income eligibility consideration by the division. The amount retained shall be used by the individual to pay state or local income taxes owed.

(f) In addition to the amounts that may be retained under subsections (d) and (e), an eligible individual may retain a Holocaust victim's settlement payment. The payment is exempt from income eligibility consideration by the division.

(g) The personal allowance for one (1) month for an individual described in subsection (a) is the amount that an individual would be entitled to retain under subsection (d) plus an amount equal to one-half ( $1/2$ ) of the remainder of:

- (1) gross earned income for that month; minus
- (2) the sum of:
  - (A) sixteen dollars (\$16); plus
  - (B) the amount withheld from the person's paycheck for that month for payment of state income tax, federal income tax, and the tax prescribed by the federal Insurance Contribution Act (26 U.S.C. 3101 et seq.); plus
  - (C) transportation expenses for that month; plus
  - (D) any mandatory expenses required by the employer as a condition of employment.

(h) The division of disability, aging, and rehabilitative services, in cooperation with the state department of health taking into account licensure requirements under IC 16-28, shall adopt rules under IC 4-22-2 governing the reimbursement to facilities under this section. The rules must be designed to determine the costs that must be incurred by efficiently and economically operated facilities to provide room, board, laundry, and other services, along with minimal administrative direction to individuals who receive residential care in the facilities under this section. A rule adopted under this subsection by:

- (1) the division; or
- (2) the state department of health;

must conform to the rules for residential care facilities that are licensed under IC 16-28.

(i) A rate established under this section may be appealed according to the procedures under IC 4-21.5.

(j) The division shall annually review each facility's rate using the following:

- (1) Generally accepted accounting principles.
- (2) The costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

*As added by P.L.2-1992, SEC.4. Amended by P.L.2-1993, SEC.78; P.L.4-1993, SEC.37; P.L.5-1993, SEC.50; P.L.152-1995, SEC.2; P.L.24-1997, SEC.22; P.L.128-1999, SEC.6; P.L.272-1999, SEC.30; P.L.294-2001, SEC.1.*

## **IC 12-10-6-2 Repealed**

*(Repealed by P.L.1-2003, SEC.104.)*

### **IC 12-10-6-2.1**

**Residential care assistance; eligibility; mental retardation; alternative placement; personal allowance; prospective prenegotiated payment rate; Christian Science facility placement**

Sec. 2.1. (a) An individual who is incapable of residing in the individual's own home may apply for residential care assistance under this section. The determination of eligibility for residential care assistance is the responsibility of the division. Except as provided in subsections (g) and (i), an individual is eligible for residential care assistance if the division determines that the

individual:

- (1) is a recipient of Medicaid or the federal Supplemental Security Income program;
- (2) is incapable of residing in the individual's own home because of dementia, mental illness, or a physical disability;
- (3) requires a degree of care less than that provided by a health care facility licensed under IC 16-28; and
- (4) can be adequately cared for in a residential care setting.

(b) Individuals suffering from mental retardation may not be admitted to a home or facility that provides residential care under this section.

(c) A service coordinator employed by the division may:

- (1) evaluate a person seeking admission to a home or facility under subsection (a); or
- (2) evaluate a person who has been admitted to a home or facility under subsection (a), including a review of the existing evaluations in the person's record at the home or facility.

If the service coordinator determines the person evaluated under this subsection is mentally retarded, the service coordinator may recommend an alternative placement for the person.

(d) Except as provided in section 5 of this chapter, residential care consists of only room, board, and laundry, along with minimal administrative direction. State financial assistance may be provided for such care in a boarding or residential home of the applicant's choosing that is licensed under IC 16-28 or a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. Payment for such care shall be made to the provider of the care according to division directives and supervision. The amount of nonmedical assistance to be paid on behalf of a recipient living in a boarding home, residential home, or Christian Science facility shall be based on the daily rate established by the division. The rate for facilities that are referred to in this section and licensed under IC 16-28 may not exceed an upper rate limit established by a rule adopted by the division. The recipient may retain from the recipient's income a monthly personal allowance of fifty-two dollars (\$52). This amount is exempt from income eligibility consideration by the division and may be exclusively used by the recipient for the recipient's personal needs. However, if the recipient's income is less than the amount of the personal allowance, the division shall pay to the recipient the difference between the amount of the personal allowance and the recipient's income. A reserve or an accumulated balance from such a source, together with other sources, may not be allowed to exceed the state's resource allowance allowed for adults eligible for state supplemental assistance or Medicaid as established by the rules of the office of Medicaid policy and planning.

(e) In addition to the amount that may be retained as a personal allowance under this section, an individual shall be allowed to retain an amount equal to the individual's state and local income tax

liability. The amount that may be retained during a month may not exceed one-third (1/3) of the individual's state and local income tax liability for the calendar quarter in which that month occurs. This amount is exempt from income eligibility consideration by the division. The amount retained shall be used by the individual to pay any state or local income taxes owed.

(f) In addition to the amounts that may be retained under subsections (d) and (e), an eligible individual may retain a Holocaust victim's settlement payment. The payment is exempt from income eligibility consideration by the division.

(g) The rate of payment to the provider shall be determined in accordance with a prospective prenegotiated payment rate predicated on a reasonable cost related basis, with a growth of profit factor, as determined in accordance with generally accepted accounting principles and methods, and written standards and criteria, as established by the division. The division shall establish an administrative appeal procedure to be followed if rate disagreement occurs if the provider can demonstrate to the division the necessity of costs in excess of the allowed or authorized fee for the specific boarding or residential home. The amount may not exceed the maximum established under subsection (d).

(h) The personal allowance for one (1) month for an individual described in subsection (a) is the amount that an individual would be entitled to retain under subsection (d) plus an amount equal to one-half (1/2) of the remainder of:

(1) gross earned income for that month; minus

(2) the sum of:

(A) sixteen dollars (\$16); plus

(B) the amount withheld from the person's paycheck for that month for payment of state income tax, federal income tax, and the tax prescribed by the federal Insurance Contribution Act (26 U.S.C. 3101 et seq.); plus

(C) transportation expenses for that month; plus

(D) any mandatory expenses required by the employer as a condition of employment.

(i) An individual who, before September 1, 1983, has been admitted to a home or facility that provides residential care under this section is eligible for residential care in the home or facility.

(j) The director of the division may contract with the division of mental health and addiction or the division of disability, aging, and rehabilitative services to purchase services for individuals suffering from mental illness or a developmental disability by providing money to supplement the appropriation for community residential care programs established under IC 12-22-2 or community residential programs established under IC 12-11-1.1-1.

(k) A person with a mental illness may not be placed in a Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., unless the facility is licensed under IC 16-28.

*As added by P.L.1-2003, SEC.52.*

### **IC 12-10-6-3**

#### **Reimbursement rules for facilities under IC 12-10-6-2; rate appeal; annual rate review**

Sec. 3. (a) The division, in cooperation with the state department of health taking into account licensure requirements under IC 16-28, shall adopt rules under IC 4-22-2 governing the reimbursement to facilities under section 2 of this chapter. The rules must be designed to determine the costs that must be incurred by efficiently and economically operated facilities in order to provide room, board, laundry, and other services, along with minimal administrative direction to individuals who receive residential care in the facilities under section 2 of this chapter. A rule adopted under this subsection by:

- (1) the division; or
- (2) the state department of health;

must conform to the rules for residential care facilities that are licensed under IC 16-28.

(b) Any rate established under section 2 of this chapter may be appealed according to the procedures under IC 4-21.5.

(c) The division shall annually review each facility's rate using the following:

- (1) Generally accepted accounting principles.
- (2) The costs incurred by efficiently and economically operated facilities in order to provide care and services in conformity with quality and safety standards and applicable laws and rules.

*As added by P.L.2-1992, SEC.4. Amended by P.L.2-1993, SEC.80; P.L.4-1993, SEC.38; P.L.5-1993, SEC.51; P.L.152-1995, SEC.3; P.L.24-1997, SEC.24.*

### **IC 12-10-6-4**

#### **Excess income recipients; continued eligibility**

Sec. 4. (a) An individual who:

- (1) is receiving residential care assistance under section 1 or 2 of this chapter; and
- (2) has an increase in income that would make the individual ineligible for residential care assistance;

may elect to continue to be eligible for residential care assistance by paying the excess income to the home or facility that provides residential care.

(b) If an individual applies the excess income toward the residential care assistance under subsection (a), the division shall reduce the payment to the home or facility that provides residential care by the amount received by the home or facility.

*As added by P.L.2-1992, SEC.4. Amended by P.L.27-1992, SEC.10; P.L.24-1997, SEC.25.*

### **IC 12-10-6-5**

#### **Mentally ill individuals; comprehensive care plan; rules**

Sec. 5. (a) An individual who is determined as disabled under section 2(a)(2) of this chapter because of mental illness may be

admitted to a home or facility that provides residential care to the extent that money is available for the care.

(b) Within thirty (30) days after a mentally ill individual is placed in a home or facility that provides residential care, a comprehensive care plan must be developed for the individual.

(c) The residential care facility, in cooperation with the community mental health center or an individual's managed care provider (as defined in IC 12-7-2-127(b)) serving the area in which the residential care facility is located, shall develop the comprehensive care plan for the individual. The plan must include the following:

(1) Psychosocial rehabilitation services that are provided within the community.

(2) A comprehensive range of activities to meet multiple levels of need, including the following:

(A) Recreational and socialization activities.

(B) Social skills.

(C) Educational, training, occupational, and work programs.

(D) Opportunities for progression into less restrictive and more independent living arrangements.

(3) Appropriate alternate placement if the individual's needs cannot be met by the facility.

(d) The health facilities council shall, in coordination with the division of mental health and addiction and the division, adopt rules under IC 4-22-2 to govern:

(1) residential care; and

(2) the comprehensive care plan;

provided to individuals suffering from mental illness who reside under this chapter in a home or facility that provides residential care.

*As added by P.L.2-1992, SEC.4. Amended by P.L.40-1994, SEC.19; P.L.215-2001, SEC.37.*

## **IC 12-10-6-6**

### **Application for assistance**

Sec. 6. (a) To obtain assistance under this chapter, an individual must apply to the local administrative unit designated by the division. The application must be:

(1) in writing or reduced to writing;

(2) made in the manner and upon the form prescribed by the division; and

(3) verified by the oath of the applicant.

(b) If an individual applying for assistance is mentally or physically unable to sign an application verified by the oath of the applicant, an application may be made by an interested individual acting in the applicant's behalf, and the application shall be verified upon the basis of information and belief of the interested individual.

(c) Each application must contain a statement of all of the following:

(1) The amount of property, both personal and real, in which the applicant has an interest.

(2) All income that the applicant has at the time of the filing of the application.

(3) Any other information prescribed by the division.

*As added by P.L.2-1992, SEC.4. Amended by P.L.128-1999, SEC.8.*

#### **IC 12-10-6-7**

##### **Investigation of applicant**

Sec. 7. Whenever the local administrative unit designated by the division receives an application for assistance under this chapter, an investigation shall be made of the circumstances of the applicant to ascertain the facts supporting the application and any other information that may be required by the rules of the division.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-8**

##### **Investigative report and recommendation**

Sec. 8. Upon completion of the investigation, the local administrative unit designated by the division shall make a report and a recommendation to the division relative to the eligibility of the applicant for assistance, the amount of the assistance, and the date when the assistance should begin.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-9**

##### **Amount of assistance; determination**

Sec. 9. The division shall determine the amount of the assistance and the date on which the assistance should begin. In determining the amount of assistance, due account shall be taken of any income or property of the applicant and of any support that the applicant may receive from other sources, including any benefit the applicant is receiving from the Social Security Administration. The award made by the division and a subsequent modification of the award is binding upon the state and shall be complied with by the state until the award or modified award is vacated.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-10**

##### **Monthly payments; warrants**

Sec. 10. (a) The assistance shall be paid monthly to:

(1) the recipient; or

(2) the administrator of the county home if the local administrative unit designated by the division so designates;

upon warrant of the auditor of state from money appropriated to the division for that purpose.

(b) The auditor of state shall draw the warrants based upon a verified schedule of the recipients and the amount payable to each recipient, prepared and verified by the director of the division in accordance with awards made by the division.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-11**

##### **Reconsideration; report of change; hearing**

Sec. 11. (a) All assistance granted under this chapter shall be reconsidered as frequently as is required by the rules of the division. After further investigation that the local administrative unit designated by the division considers necessary or that the division requires, the amount of assistance may be changed or entirely withdrawn if the division finds that the recipient's circumstances have altered sufficiently to warrant that action.

(b) Whenever assistance is withdrawn, revoked, suspended, or in any way changed, the division shall immediately report the decision to the local administrative unit designated by the division.

(c) If assistance is in any way changed, the recipient is entitled to a hearing under the rules adopted by the division.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-12**

##### **New county home admittees; aid in applying for assistance**

Sec. 12. When an individual is admitted to a county home, the administrator of the home shall assist the resident in applying for assistance under this chapter.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-13**

##### **Higher education award not to be considered income or resource for purposes of assistance eligibility**

Sec. 13. If an individual receives a state or federal higher education award that is paid directly to an approved institution of higher learning (as defined in IC 20-12-21-3) for that individual's benefit:

(1) that individual is not required to report that award as income or as a resource of that individual when applying for assistance provided under this chapter; and

(2) the award may not be considered as income or a resource of the individual in determining initial or continuing eligibility for assistance under this chapter.

*As added by P.L.2-1992, SEC.4.*

#### **IC 12-10-6-14**

##### **Operation cost reports; annual review; rate reimbursement modification recommendations**

Sec. 14. (a) Each home or facility that receives funding from the state for residential care assistance under this chapter shall file an operation cost report in a manner prescribed by the division.

(b) The division shall annually conduct a review of the operation cost reports for homes and facilities:

(1) that provide residential care; and

(2) receive funding from the state for residential care assistance under this chapter;

to determine the actual cost of providing services to individuals who



receive residential care assistance.

(c) Applying the results of the review under subsection (b), the division shall submit a recommended modification of rate reimbursement for residential care assistance to the budget agency before April 1 of each year.

*As added by P.L.2-1992, SEC.4. Amended by P.L.24-1997, SEC.26.*